

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Add Sections 150.02 and 150.04
Title 14, California Code of Regulations
Re: Control Dates for Other Species of Nearshore Fish

- I. Date of Initial Statement of Reasons: February 5, 2002
- II. Date of Pre-adoption Statement of Reasons: April 10, 2002
- III. Date of Final Statement of Reasons: May 15, 2002
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: March 8, 2002
Location: San Diego, CA
 - (b) Discussion Hearing Date: April 5, 2002
Location: Long Beach, CA
 - (c) Adoption Hearing: Date: May 9, 2002
Location: Fresno, CA
- V. Update: Three options for a control date were provided to the Commission. The Commission chose to adopt a control date of December 31, 1999 for participation and October 20, 2000 for a possible gear endorsement program. These dates mirror the control dates for the nearshore species which already require a permit. Based on broad criteria, it is estimated that about 2,800 commercial fishermen participated prior to the control date. During public testimony four people spoke in favor of this option. Testimony received at the San Diego meeting communicated a need to set control dates consistent with the permitted nearshore species. It was also the most restrictive option yielding about 100 fewer permittees than the other options. The Department recommended the December 31, 2001 control dates for participation and gear endorsement.

The other two options were a control date of either December 31, 2001 or March 8, 2002. It is estimated that almost 2,900 commercial fishermen participated prior to the December 31, 2001 control date, with an additional 10 fishermen participating by March 8, 2002. During public testimony two people

spoke in favor of the December 31, 2001 option and no one spoke in favor of the March 8, 2002 option. One person spoke against the need to set a control date for gear endorsements, however, no one spoke against setting a control date for participation.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those considerations:

(1) Doug Chessman, in a letter dated March 26, 2002, asked if he would be able to participate in the live rockfish fishery. He has a history of working as a crew member on live fish vessels.

Response: John Duffy, Assistant Executive Director of the Fish and Game Commission, responded that if he has no landings in his name he would likely not receive a permit if a restricted access program is developed. However, he would probably be able to work as a crew member.

(2) Bill James, president of the Port San Luis Fisherman's Association, in testimony given at the Commission meeting on May 9, 2002, felt that fishermen should be allowed to continue using the gear they have been using. He uses handlines and does not use hydraulics. This type of gear has less impact and helps promote a sustainable fishery.

Response: The intent of a gear endorsement program is to allow fishermen to continue to use the gear they have used in the past. It may be necessary to restrict fishermen from shifting to different types of gear in the future to limit effort.

(3) Ron Gaul, of United Anglers, in testimony given at the Commission meeting on May 9, 2002, preferred a control date of December 31, 1999 for participation and October 20, 2000 for a possible gear endorsement program. He also spoke in support of a permit buyout program and does not support Individual Fishing Shares (IFS), which are similar to Individual Transferable Quota (ITQ) programs. He also felt that the catch of invertebrates in traps is high and noted that the US Fish and Wildlife Service spent money to provide trap fishermen with excluder rings for their traps.

Response: Testimony supports the Commission's action. Implementation of any restricted access program, whether IFS or basic limited entry, is addressed within the Nearshore Fishery Management Plan (NFMP).

(4) Dan Platt, President of the Fisherman's Marketing Association in Fort Bragg, in testimony given at the Commission meeting on May 9, 2002, preferred a control date of December 31, 2001 over the other options.

Response: The Commission chose a more restrictive option to be consistent with the control dates for the permitted nearshore species and in an effort to limit the number of qualifying individuals.

(5) Kurt Solomon, commercial fisherman in Moss Landing, in testimony given at the Commission meeting on May 9, 2002, asked about the amount of recreational catch for the nearshore species being considered under the control date.

Response: The NFMP contains information on recreational catch for all 19 nearshore species and allows for consideration of recreational and commercial catch levels.

(6) Randy Fry, President of the Nearshore Chapter of United Anglers of Southern California, in testimony given at the Commission meeting on May 9, 2002, preferred a control date of December 31, 1999 for participation and October 20, 2000 for a possible gear endorsement program.

Response: Testimony supports the Commission's action.

(7) Jim Bassler, President of the Salmon Trollers Association, in testimony given at the Commission meeting on May 9, 2002, preferred a control date of December 31, 2001 over the other options.

Response: The Commission chose a more restrictive option to be consistent with the control dates for the permitted nearshore species and in an effort to limit the number of qualifying individuals.

(8) Bob Strickland, of United Anglers of Northern California, in testimony given at the Commission meeting on May 9, 2002, feels that there are too many people in this fishery and that the numbers need to be reduced. He also spoke about developing a commercial permit buyout and implementing a recreational stamp program.

Response: The Department agrees that there may be a need to reduce the number of participants in this segment of the nearshore fishery and a control date is the first step in limiting access to this fishery. Regarding the other issues, the Pacific Fishery Management Council is looking into the possibility of a vessel buyout program using groundfish disaster relief funds. Commission

President, Michael Flores suggested that he approach the Al Taucher's Preserving Hunting and Sport Fishing Opportunities Advisory Committee regarding a recreational stamp program.

Additional responses to public comments received were included in the Pre-adoption Statement of Reasons (see attached).

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulatory Action: The major alternatives considered for establishment of a control date differ from the three alternatives provided by having either a shorter or longer qualifying period than recommended.

A control date of November 5, 1999 was one date considered. This is the date the Council adopted as the control date for the open access portion of the Pacific coast groundfish fishery. Currently, most of the nearshore species included in this proposed control date are regulated by the Council. The majority of fishermen landing these species do so under the open access portion of the groundfish fishery. Therefore, they have already been noticed by the Council and the State would be conforming to their control date.

Establishing a control date after either of the proposed control dates would allow an unknown number of individuals to qualify. It could also increase effort toward these nearshore fish stocks, because fishermen will know that they need landings in order to be considered for any future restricted access program.

- (b) No Change Alternative: Not adopting the proposed regulations would demonstrate an intent to leave the commercial nearshore fishery for black

rockfish, blue rockfish, brown rockfish, calico rockfish, copper rockfish, monkeyface eel, olive rockfish, quillback rockfish and treefish completely open to access. Such an approach conflicts with guidelines in the Marine Life Management Act which stress precautionary management for utilized commercial fishery resources. Establishing control dates for this segment of the nearshore fishery serves to notify fishermen that restricted access programs may be developed for future implementation. This is a recognized strategy outlined in the Commission's policy governing restricted access fisheries.

- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, as it serves only to put individuals on notice that future regulations may be developed.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

Updated Informative Digest (Policy Statement Overview)

Regulations are needed to establish control dates that will serve to notify commercial fishermen that if they have not participated in one segment of the nearshore fishery prior to this date, they may not qualify for participation in a fishery for these species under a future restricted access program. These species include black rockfish, blue rockfish, brown rockfish, calico rockfish, copper rockfish, monkeyface eel, olive rockfish, quillback rockfish and treefish.

Additional regulations would specify the need to demonstrate use of a particular gear type prior to the control date to take these species, so that they could qualify for future participation in that segment of the nearshore fishery under a future gear endorsement program.

These 9 species are defined as nearshore fish stocks in current regulations, yet their take does not require a Nearshore Fishery Permit. Take of these species is not governed by the existing control dates already established for nearshore fishery restricted access and for a nearshore fishery gear endorsement program.

The Fish and Game Commission adopted a control date of December 31, 1999 for participation and October 20, 2000 for a possible gear endorsement program for these nearshore species.

Adoption of control dates now will serve to notice new participants in this component of the nearshore fishery that they may not be eligible for future participation, and that future investments in equipment or gear to participate in this fishery may not be warranted. Moreover, the dates establish a point in time after which persons just beginning to participate in the fishery, or that begin using a new type of gear in the fishery, must meet future criteria to be established by the Commission in order to maintain continued access to these commercial nearshore resources.

STATE OF CALIFORNIA
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ADDENDUM TO FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Add Sections 150.02 and 150.04
Title 14, California Code of Regulations
Re: Control Dates for Other Species of Nearshore Fish

I. Date of Addendum to Final Statement of Reasons: August 6, 2002

V. Update:

The following information is provided to satisfy the requirements of Section 7059, Fish and Game Code (FGC) regarding communication, collaboration and dispute resolution with fishery participants and interested parties.

The Department held the nine public meetings identified in the Initial Statement of Reasons, in addition to the Commission's discussion and adoption hearings, to provide full public access to the regulatory process in compliance with Section 7059, FGC.

The Nearshore Advisory Committee membership includes environmental representatives from the Pacific Ocean Conservation Network, the Natural Resources Defense Council, and American Ocean Campaign. Thirteen recreational fishery representatives, 13 commercial fishing and seafood processor representatives, and four representatives of commercial passenger fishing vessels, are represented on the advisory committee. Also, four members of the committee are marine scientists with academic institutions including San Francisco State University, Moss Landing Marine Laboratory, CSU Long Beach, and San Diego State University.

All of the meetings of the Advisory Committee were facilitated by employees of a third-party professional mediation company.

Section 150.02, Title 14, California Code of Regulations is added to read:

150.02. Control Date for Other Nearshore Species.

(a) A control date of December 31, 1999 is established for the purpose of developing a limited access commercial nearshore fishery for those persons taking nearshore fish stocks defined pursuant to Section 1.90. Species subject to this control date include only black rockfish, blue rockfish, brown rockfish, calico rockfish, copper rockfish, monkeyface eel, olive rockfish, quillback rockfish and treefish. Landings of these species made after this date may not apply toward qualifying for participation in a future restricted access program for this component of the nearshore fishery.

(b) This section does not apply to those nearshore species for which a Nearshore Fishery Permit is required pursuant to Section 150.01.

NOTE

Authority cited: Section 7071 and 8587.1, Fish and Game Code. Reference: Sections 7071, 8585.5, and 8587.1, Fish and Game Code.

Section 150.04, Title 14, California Code of Regulations is added to read:

150.04. Control Date for Gear Endorsement Program for Other Nearshore Species.

(a) A control date of October 20, 2000 is established for the purpose of developing and implementing a gear endorsement program for the commercial nearshore fishery for those persons taking species of nearshore fish stocks defined pursuant to Section 1.90. Species subject to this control date include only black rockfish, blue rockfish, brown rockfish, calico rockfish, copper rockfish, monkeyface eel, olive rockfish, quillback rockfish and treefish.

(b) In addition to any other requirements the Commission may adopt, in order to be considered for inclusion in a future gear endorsement program described in subsection (a), persons must have made at least one landing of nearshore fish stocks described in subsection (a). This landing must be in their own name and commercial fishing license identification number on or before the control date in subsection (a) using a specified gear type (traps and/or hook and line and/or nets) as documented by a fish landing receipt prepared pursuant to Fish and Game Code Section 8043 and submitted to the department pursuant to Fish and Game Code Section 8046.

(c) This section does not apply to those nearshore species for which a Nearshore Fishery Permit is required pursuant to Section 150.01.

NOTE

Authority cited: Section 7071 and 8587.1, Fish and Game Code. Reference: Sections 7071, 8043, 8046, 8585.5, 8586, 8587.1, Fish and Game Code.